IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 175 of 2004

M/S JYOTI INDUSTRIES
V/S
J.V.V.N.LTD.

Mr. SL JAIN, for the appellant / petitioner

Mr. DS RAAJVI, for the respondent

Date of Order : 3.8.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant. Perused the impugned judgments, and the record.

The plaintiff filed a suit for mandatory injunction, directing the defendants to restore the energy connection, and seeking to restrain them from recovering the amount of Rs.77707.60 P., and from recovering the sum of Rs.8,550/- by way of load surcharge, every month.

The controversy arises in the circumstances, that according to the defendant on 15.9.1990 appellant factory was checked, and it was found, that the plaintiff was having connected load of 206 HP, instead of the sanctioned connected load of 130 HP, while according to the plaintiff, this is wrong, inasmuch as, recently the factory was

inspected by the Superintending Engineer and Executive Engineer, who found that the connected load is to the extent of 130 HP only, then letter dated 27.9.1990 was denied to have been received, and inspection report and other communication of the defendant are alleged to have been replied. Then it is contended, that in the bill, a sum of Rs.76,950/- has been added by way of load surcharge, from the months of October, 1990 to June, 1991, and Rs.8,550/- have been demanded as load surcharge per month, which the plaintiff is not liable to pay. It is then contended that before disconnecting the energy supply no notice was given to the plaintiff, as required by Sec. 24 of the Electricity Act. Inter-alia with these averments, the above reliefs have been claimed.

The learned trial court has found, that the defendant has immediately deposited Rs.8,550/- on 15.9.1990 itself, and on 9.7.1991, the plaintiff was given notice for reducing the increased load, and to submit the revised "L" form, otherwise liability of load surcharge, being Rs. 8,550/- per month, will continue. Then checking report Ex.-A/1 has been relied, and the defendant has been held entitled to recover the amounts, then regarding requirement of notice, provisions of Sec. 24-A were relied upon.

In appeal, the appellate court has endorsed the finding of the learned trial court, and has believed the checking report Ex.-A/1, and believed the same to have been

proved. Then regarding notice also the findings were endorsed.

It was contended by the learned counsel for the appellant, that in para 5 of the written statement the defendant has admitted, that in the same premises there are two connections, one in the name of the plaintiff, and other in the name of Ishwar Das Jagga, and the plaintiff can shift the load from one meter to other, and therefore, the consumer may be treated to be HT consumer, and both the connections be clubbed. According to the learned counsel, from this admission, coupled with the fact, that on inspection on 4.8.91, the load was not found to be in excess beyond permissible limits, and therefore the suit is required to be decreed.

It is also contended, that the plaintiff, as PW-1 has clearly given details about the installations, using less than 130 HP energy, and therefore it cannot be said, that there was any excess load.

I have considered the submissions and have gone through the record.

In my view, the question, as to whether on inspection on 15.9.1990, the connected load of the plaintiff was 130 HP or 106 HP, in the circumstances of the case, is a pure question of fact. The plaintiff has given

details of the appliances, consuming connected load of less than 130 HP, while in Ex.-A/1 the list of appliances has been given, showing the HPs of different motors and appliances, total whereof comes to 206 HPs. Significantly, the plaintiff has not controverted or contended, as to which of the appliances in Ex.-A/1, were either not installed, or were consuming energy from the other connection, existing in the premises, in the name of Ishwar Das Jagga. It is a different story, that the HPs of the appliances, deposed by the plaintiff, do not tally with the HPs of the some of the appliances detailed in Ex.-A/1. In this background, significantly, at no point of time, much less immediately after the inspection, has the plaintiff reacted, or joined controversy, by explaining, as to how, the facts narrated in the inspection report, about connected load being 206 HP, are wrong.

So far the quantum of amount demanded by the defendant is concerned, nothing has been shown, as to how the calculation of the amount is wrong, if the connected load of HP, as actually found on the site is 206, HP instead of sanction load of 130 HP. Admittedly, the demand is being raised only for the period prior to 4.8.91, by which time the defendant was found to have reduced the load.

Learned counsel for the appellant referred the judgment of this Court, in M/s Marudhara Dye Chem Vs.

Rajasthan State Electricity Board & Ors., reported in 1995 (3) WLC Pg. 107. In my view, that judgment does not help the plaintiff, as in that case, the question decided was, that the recovery could not be ordered without giving opportunity of hearing. In the present case, even after the first demand having been raised, and the plaintiff had deposited the amount under protest, apart from the fact that the controversy was not raised by the plaintiff, in any case, in the present suit, the matter has been gone into by the learned courts below threadbare.

Thus, considering from any stand point, I do not find any question of law to be involved in this appeal. The appeal is therefore dismissed summarily.

(N P GUPTA),J.

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